

E-FILED 7/15/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHARLES W. O'BRYAN JR.,

NO. C 08-3367 RS

Plaintiff,

v.

RODEO EXPRESS CHARTERS, et al.,

Defendants.

**ORDER GRANTING
APPLICATION TO PROCEED *IN
FORMA PAUPERIS* AND
REASSIGNING ACTION WITH
RECOMMENDATION THAT
THE ACTION BE DISMISSED
WITH LEAVE TO AMEND FOR
FAILURE TO STATE A CLAIM**

Plaintiff Charles O'Bryan Jr. lodged a complaint alleging that defendants Rodeo Express Charters, et al., were negligent for letting a passenger ride in the front seat of a vehicle and assigning O'Bryan a faulty piece of equipment. His complaint also contains language for possible claims of harassment, discrimination, and emotional distress. On July 11, 2008, he filed an application to proceed *in forma pauperis* ("IFP").

Pursuant to 28 U.S.C. § 1915(a)(1), the court may authorize the commencement of an action "without prepayment of fees" by a person who submits an affidavit of poverty indicating that the affiant is "unable to pay such fees." O'Bryan's supporting declaration establishes his inability to pay filing fees. However, pursuant to the statute authorizing IFP proceedings, 28 U.S.C. § 1915(e)(2), "the court . . . shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious . . . [or] fails to state a claim on which relief may be granted" O'Bryan states no legitimate federal claim or basis for federal jurisdiction. Nevertheless, absent consent of the parties, a magistrate judge may not make dispositive rulings. 28 U.S.C. § 636. This case must, therefore, be reassigned to an Article III Judge, with the recommendation that this action be

1 dismissed for failure to state a claim on which relief may be granted. O'Bryan is forewarned that any
2 amended complaint must comply with Rule 8(a) of the Federal Rules of Civil Procedure, which
3 provides in relevant part, that a complaint must contain "a short and plain statement of the claim
4 showing that the pleader is entitled to relief."

5 Based upon the reasoning above, it is hereby ORDERED that:

6 (1) plaintiff's application to proceed *in forma pauperis* is GRANTED;

7 (2) this matter shall be returned to the clerk of court for reassignment, with the
8 recommendation that it be dismissed with leave to amend for failure to state a claim.

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11 Dated: July 15, 2008


RICHARD SEEBORG
United States Magistrate Judge

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28 RECOMMENDATION THAT THE ACTION BE DISMISSED WITH LEAVE TO AMEND FOR FAILURE TO
STATE A CLAIM
C 08-3367 RS

1 **THIS IS TO CERTIFY THAT A COPY OF THIS ORDER WAS MAILED TO:**

2 Charles W O'Bryan, Jr
3 1275 Ashcroft Lane
4 San Jose, CA 95118

5 Dated: July 15, 2008

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7 /s/ BAK
8 Chambers of Magistrate Judge Richard Seeborg
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